UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,403	12/12/2003	Richard Louis Arndt	AUS919990938US2	2116

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EXAMINER
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ART UNIT	PAPER NUMBER
2195	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _28 April 2005_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _11-24_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _11-24_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _12 December 2003_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
       application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _12/12/03, 4/6/04,. 7/26/04, 4/28/05_

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 11-24 are presented for examination.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2.   **Claims 11 is provisionally rejected under the judicially created doctrine of**

obviousness-type double patenting as being unpatentable over claim 4 of copending

Application No. 09/589661 in view of Weitzsch et al. (hereinafter Weitzsch) (EP 0419723

A1).

3.   Copending Application No. 09/589661 teaches the concepts of the application, namely

receiving, at a hypervisor, a message from a one of a plurality of operating system images,

executing within the data processing system, intended for a shared resource *(lines 8-12)*;

transmitting the new message to an external data processing system for presentation to a user

(sends the new message) (lines 8-12).   09/589661 does not explicitly teach determining

identities. However, Witzsch teaches a software coded message such as a request attached with

identity codes (VMID) for transmission involving a hypervisor *(see Abstract)*. It would have

been obvious to one of ordinary skill in the art at the time the invention was made to include the

feature of encoding the message and the identity into a new message into the existing

messaging/requesting system involving a hypervisor because this would reduce complexity *(see*

Abstract).

4.   Claims 12-24 are rejected for the same reasons as stated in the rejection of claim 11.

5.   This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting

claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

6.   Claims 11-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noel et

al. (hereinafter Noel) (US 2002/0016891 A1) in view of Weitzsch et al. (hereinafter

Weitzsch) (EP 0419723 A1).

7.   As to claim 11, Noel teaches a method of providing separate copies of shared resources to

each of multiple partitions within a data processing system, the method comprising:

receiving, at a hypervisor, a message (request) from a one of a plurality of operating

system images, executing within the data processing system, intended for a shared resource

([0007]);

determining an identity of the one of the plurality of operating system images (can be

identified from operating system instance ID) *([0051])*;

transmitting the new message to an external data processing system for presentation to a

user (passing messages over a communication network) *([0006])*.

Noel fails to explicitly teach encoding the message and the identity into a new message.

However, Witzsch teaches a software coded message such as a request attached with identity

codes (VMID) for transmission involving a hypervisor *(see Abstract)*.   It would have been

obvious to one of ordinary skill in the art at the time the invention was made to include the

feature of encoding the message and the identity into a new message into Noel's

messaging/requesting system involving a hypervisor because this would reduce complexity *(see*

Abstract).

8.   As to claim 12, Noel teaches wherein the shared resource is an operator panel *([0041])*.

9.   As to claim 13, Noel teaches wherein the shared resource is a system console *([0038])*.

10.   As to claim 14, Witzsch teaches receiving (delivered) external data from the external data

processing system; decoding (decoding done to determine delivered request with identity code)

the external data to determine an input, an identity of the shared resource, and an intended one of

the plurality of operating system images; and transmitting (delivering) the input to the intended

one of the plurality of operating system images with an indication the identity of the shared

resource from which the input corresponds *(see Abstract)*.

11.   As to claims 15, they are rejected for the same reasons as stated in the rejection of claims

11.

12.   As to claims 16-18, they are rejected for the same reasons as stated in the rejection of

claims 12-14.

13.   As to claims 19, they are rejected for the same reasons as stated in the rejection of claims

11.

14.   As to claims 20-21, they are rejected for the same reasons as stated in the rejection of

claims 2-3.

15.   As to claims 22, they are rejected for the same reasons as stated in the rejection of claims

18.

16.   As to claim 23, Noel teaches a system for partitioning shared resources *(Fig. 2, items*

200, 208, 210, 212, etc.), the system comprising:

a first data processing system *(Fig. 2, 200)* comprising:

a plurality of partitions each corresponding to separate one of a plurality of operating

system images (operating system instances) *(Fig. 2, items 200, 208, 210, 212, etc.)*;

a plurality of assignable resources *([0007])*; and

a hypervisor for providing each partition a separate one of a shared system resource

([0007]-[0008]);

a second data processing system coupled to the first data processing system, wherein the

second data processing system receives a message from the hypervisor (passing messages over a

communication network) *([0006]-[0007])*.

17.   Noel fails to explicitly wherein the message indicates to which of the plurality of

operating system images the message belong, and wherein the second data processing system

displays the message to a user with an indication of the operating system image corresponding to

the message. However, Witzsch teaches a software coded message such as a request attached

with identity codes (VMID) for transmission involving a hypervisor, wherein the identity codes

help to identify and select between images within virtual machines or processing processors *(see*

Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention

was made to include the feature of wherein the message indicates to which of the plurality of

operating system images the message belong, and wherein the second data processing system

displays the message to a user with an indication of the operating system image corresponding to

the message to the existing messaging/requesting system of Noel because this would reduce

complexity *(see Abstract)*.

18.   As to claim 24, Witzsch teaches wherein the data processing system (input/output

system), responsive to operator input for a specified one of the plurality of operating system

images, sends encapsulated data, comprising the operator input and an indication of the

corresponding operating system image, to the hypervisor, and wherein the hypervisor decodes

the encapsulated data and sends the operator input to the corresponding operating system image

(see Abstract).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kenneth Tang whose telephone number is (571) 272-3772. The

examiner can normally be reached on 8:30AM - 6:00PM, Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kt
8/8/05

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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER